

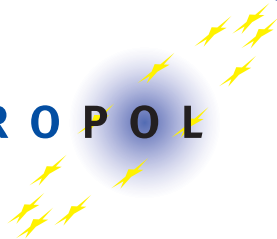
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Annex II

Comparison
of relevant legislation on
Illegal Immigrant Smuggling
(Penalties and aggravating circumstances)

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Table of Contents¹

| | |
|------------------------------|----|
| 1. Austria | 3 |
| 2. Belgium | 5 |
| 3. Cyprus | 6 |
| 4. Czech Republic | 8 |
| 5. Denmark | 9 |
| 6. Estonia | 10 |
| 7. Finland | 11 |
| 8. Germany | 12 |
| 9. Greece | 15 |
| 10. Hungary | 16 |
| 11. Ireland | 17 |
| 12. Italy | 18 |
| 13. Latvia | 19 |
| 14. Lithuania | 20 |
| 15. Malta | 21 |
| 16. The Netherlands | 22 |
| 17. Poland | 24 |
| 18. Portugal | 25 |
| 19. Slovak Republic | 26 |
| 20. Slovenia | 28 |
| 21. Spain | 30 |
| 22. Sweden | 31 |
| 23. The United Kingdom | 32 |

¹ This compilation does not contain the legislation from France and Luxembourg

EUROPOL PUBLIC INFORMATION

1. Austria

Penalties

Criminal Law

Trafficking in migrants

Article 114

(1) Up to one year imprisonment (any person who knowingly assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring State of Austria)

(2) Up to two years imprisonment (any person who assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring State of Austria with the intention of unlawfully enriching himself or a third party through payment made to that end)

(3) Up to three years imprisonment (any person who, in the last five years, has been convicted of trafficking in migrants within the meaning of paragraph 2 shall be liable to a term of. This shall include any conviction by a foreign court in proceedings conducted in accordance with the principles laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

(4) From six months to five years imprisonment (any person who commits the act as referred to in paragraph 2 for business purposes (Article 70 of the Criminal Code) or in such a way that the alien concerned is subjected to painful conditions for a long period, in particular during transportation)

(5) From one to 10 years imprisonment (any person who commits the act as referred to in paragraph 2 as the member of a criminal association, or in such a way that the life of the alien to whom the criminal act relates is endangered)

(6) Aliens whose unlawful entry or transit is assisted by the act shall not be penalised as parties to the offence (Article 12 of the Criminal Code). Their expulsion or deportation may be delayed where and in so far as this is necessary in order to question them as to the facts of the case.

(7) Where a delay would be dangerous, the agencies responsible for maintaining public security shall be authorised temporarily to impound items which the perpetrator has with him or means of transport or containers used to commit the act in order to ensure confiscation of the enrichment (Article 20 of the Criminal Code), forfeiture (Article 20b of the Criminal Code) or seizure (Article 26 of the Criminal Code). The cargo of the means of transport may be handed over to the holder of the vehicle registration document or his agent. The court shall be informed immediately of the measures which are taken.

(8) The courts of first instance shall be responsible for proceedings in connection with the act referred to in paragraph 1.

Assisting unauthorised residence

Article 115

(1) Up to six months imprisonment or a fine not exceeding 360 on the scale of daily penalty units (any person who, with the intention of preventing the procedure for issuing or implementing measures terminating residence, facilitates an alien's unlawful residence in the territory of a Member State of the European Union)

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(2) Up to one year imprisonment or to a fine not exceeding 360 on the scale of daily penalty units (any person who, with the intention of enriching himself or a third party through payment of a more than negligible amount made to that end, facilitates an alien's unlawful residence in the territory of a Member State of the European Union)

(3) Up to three years imprisonment (any person who commits the act for business purposes)

(4) The alien who benefited or was intended to benefit from the assistance as referred to in paragraphs 1 or 2 shall not be penalised as a party to the offence.

(5) The courts of first instance shall be responsible for proceedings in connection with the acts referred to in paragraphs 1 and 2.

Exploitation of an alien

Article 116

(1) Up to three years imprisonment (any person who, with the intention of procuring for himself or a third party a regular income by taking advantage of the particular dependency of an alien who is residing unlawfully in Austria, has no work permit, or is otherwise in a state of particular dependency, exploits that alien)

(2) From six months to five years imprisonment (any person who, through that act, subjects an alien to deprivation, or exploits a large number of aliens)

(3) From one to 10 years imprisonment (where the act results in the death of an alien)

Entry into and arrangement of marriages for residence purposes

Article 117

(3) Up to three years imprisonment, where the act is not subject to a more stringent penalty under a different provision (any person who arranges or sets up marriages for business purposes even though he is, or must have been, aware that the persons concerned will rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to lead a family life within the meaning of Article 8 of the ECHR)

Adoption for residence purposes and arrangement of adoptions for residence purposes of *sui iuris* aliens.

Article 118

(2) Up to one year imprisonment or to a fine not exceeding 360 on the scale of daily penalty units, where the act is not subject to a more stringent penalty under a different provision (an Austrian or an alien entitled to establish himself in Austria who, with the intention of unlawfully enriching himself or a third party through payment made to that end, adopts a *sui iuris* alien even though he is, or must have been, aware that the alien will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to maintain a relationship similar to that between natural parents and children, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a term (3) Any person who arranges or sets up adoptions as referred to in paragraphs 1 or 2 for business purposes (Article 70 of the Criminal Code) even though he is, or must have been, aware that the persons concerned will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to maintain a relationship similar to that between natural parents and children)

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2. Belgium

Penalties:

Aliens (Entry, Residence, Establishment and Deportation) Act of 15 December 1980

The text below does not apply if help or assistance is provided for mainly humanitarian reasons.

Article 77

A fine between 42,00€ - 150,00€ and up to three months imprisonment (whoever knowingly helps or assists an alien either in the acts preparing the illegal entry or the illegal settlement in the Kingdom or has facilitated them, either in the acts themselves or whoever knowingly helps or attempts to help an alien to enter or settle on the territory of a State member of an international convention on outside border crossing applying to Belgium, violating this state's legislation on alien entry or settlement)

For a recidivist that commits these acts within 3 years of the previous conviction, penalties will increase a prison sentence between 1 month and 1 year and to a fine between 150,00 € and 750,00 €, or to one of these penalties only.

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3. Cyprus

In Cyprus, the “Aliens and Immigration Act” regulates alien smuggling under “offences and penalties” (Chapter 105, Section 19).

The “Aliens and Immigration Act” provides that any person who inter alia aids or assists any so-called ‘prohibited immigrant’ to enter or remain in Cyprus shall be guilty of an offence. Such a person may be liable to imprisonment for a term not exceeding 12 months, to a fine not exceeding Cyprus Pounds 1,000 or to both.

Penalties:

Aliens and Immigration Act, **Chapter 105 – Section 19 (1)-(3):**

Section 19 (1)(a)-(m):

A fine not exceeding 1.000 Cyprus Pounds, up to 12 months imprisonment or to both (any person who makes any false return, statement or declaration in connection with an application for a licence or permit to remain in the Colony whether for himself or any other person (a); by any false return, statement or declaration obtains for himself or any other person any licence or permit (b); fully alters any licence or permit granted under this Law or any Regulations made hereunder (c); uses or without reasonable excuse has in his possession any forged or unlawfully altered licence or permit (d); refuses to answer or answers falsely any question put to him by an immigration officer on any matter in respect of which an immigration officer may put questions under or for the purposes of this Law or any Regulations made hereunder (e); refuses to produce to an immigration officer any document which an immigration officer may require him to produce under or for the purposes of this Law or any Regulations made hereunder (f); **aids or assists any prohibited immigrant to enter or remain in the Colony in contravention of this Law or any Regulations made there under (g)**; knowingly harbours any person whom he knows or has reasonable grounds for believing to have acted in contravention of this Law or any Regulations made hereunder (h); resists or obstructs, either actively or passively any immigration officer in the execution of his duty (it); being a license under this Law, contravenes any term or condition contained in such licence (j); being the holder of a permit granted under this Law or any Regulations made there under, contravenes any term or condition contained in such permit (k); having entered the Colony as temporary resident for a limited period remains in the Colony after that period has expired without having obtained permission from the Chief Immigration Officer (l); refuses to allow himself or his baggage to be searched as provided in section 18 (m))

Section 19 (2)(a)-(d):

A fine not exceeding 1000 Cyprus Pounds, up to 12 months imprisonment or to both (for a prohibited immigrant found in the Colony, without prejudice to the powers vested in immigration officer under the provisions of section 13, unless he proves – that he lawfully entered the Colony before the commencement of this Law (a); that, having entered the Colony by air and not being a person who had previously been held to be a prohibited immigrant, he was proceeding to present himself to the nearest immigration officer (b); that he holds a licence or permit granted under this Law or any Regulations made there under or some other Law, to remain in the Colony (c); or that, his licence or permit

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having expired or been revoked, he has not had a reasonable opportunity to leave the Colony (d))

Section 19 (3)(a)-(b):

Any fine (imposed on the master of a ship or the pilot of an aircraft under the provisions of this Law – in the case of the master of a ship, before the ship's clearance is granted (a); and in the case of the pilot of an aircraft before his departure (b), and the production by an immigration officer to the proper authority at the port or airport of a copy of the order or conviction of the master or pilot, as the case may be, shall give full power to such authority to refuse the ship's clearance or the departure of the pilot of the aircraft, until it is provided to his satisfaction that such fine has been paid)

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4. Czech Republic

Penalties:

Illegal crossing of the State Border, section 171a and 171b

Section 171a

- (1) A pecuniary penalty or up to one year imprisonment (person who organizes for another person or enables such person to make an illegal border crossing of the state border)
- (2) From six months to three years imprisonment (if he commits an act under subsection (1) with intent to conceal or facilitate another crime; he commits such an act for remuneration; or commits such an act as a member of an organized group).

Section 171 b

- (1) From one to five years imprisonment or forfeiture of his property (whoever crosses the state border by using force or the threat of immediate force)
- (2) From two to eight years imprisonment or forfeiture of his property (if he organises and acts under subsection (1); commits such an act with weapon or together with at least two other persons; commits such an act with the intent to conceal or facilitate another crime; by such act causes serious injury to health or some other serious consequence; commits such an act during a state defense emergency)
- (3) From eight to fifteen years imprisonment (if he causes death when committing an act under subsection (1), or commits such an act as a soldier during a state emergency)

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5. Denmark

Section 59(5) of the Aliens Act was changed in June 2004. According to the changes, any person who intentionally assists an alien in an unlawful entry or stay in Denmark, unlawful transit to another country or assists an alien to enter Denmark for the purpose of entering another country unlawfully from Denmark is liable to a fine or imprisonment for up to two years. The same punishment applies to anyone who, for financial gain, assists an alien to stay in Denmark or in another country.

Penalties:

Section 59 (2) Aliens Act

A fine or up to 2 years imprisonment (any person who employs an alien not issued with the requisite work permit or does so in violation of the conditions laid down for the issue of a work permit)

Section 59(5) Aliens Act:

A fine or up to 2 years imprisonment (any person who intentionally assists an alien in unlawful entry, stay or transit in Denmark; enters Denmark for the purpose of entering another country unlawfully from Denmark ; unlawfully enters or unlawfully transits to another country; for the purpose of financial gain assists an alien in staying unlawfully in another country.)

Section 59(a)(1) Aliens Act:

A fine (any person that brings to Denmark an alien who upon his entry is not in possession of the requisite travel document and visa, cf. section 39)

Section 59(a)(2) Aliens Act:

The provision of subsection (1) does not apply on entry from a Schengen country.

Section 125a Penal Code:

Up to 8 years imprisonment (any person who under aggravating circumstances is found guilty of the smuggling of human beings in pursuance of section 59(5) of the Aliens Act)

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6. Estonia

In Estonia, the main articles related to smuggling of persons and illegal immigration are §§ 258, 259 and 260 of the Penal Code.

Penalties:

Illegal crossing of state border or temporary border line of Republic of Estonia - § 258 (1)-(2) Penal Code:

§ 258 (1) Penal Code

A fine or up to 1 year imprisonment (illegal crossing of the state border or temporary border line of the Republic of Estonia, if committed in disregard of a stop signal or order given by a Border Guard official; by a group; by a means of transport in a location not intended for crossing; and a punishment for a misdemeanor has been imposed on the offender for the same act)

§ 258 (2) Penal Code

From 4 years to 12 years imprisonment (the same act, if committed by using violence, or by causing serious damage to health)

Illegal transportation of aliens across state border or temporary border line of Republic of Estonia - § 259 (1)-(3) Penal Code:

§ 259 (1) Penal Code

A fine or up to 1 year imprisonment (illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia)

§ 259 (2) Penal Code

A fine or up to 3 years imprisonment (the same act, if committed by a group, or by using violence)

§ 259 (3) Penal Code

From 4 years to 12 years imprisonment (an act provided for in subsection (1) or (2) of this section, if serious health damage is thereby caused)

Stay of alien in Estonia without legal basis - § 260 Penal Code:

A fine or up to 1 year imprisonment (an alien who stays in Estonia without a legal basis at least twice within a year)

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7. Finland

In Finland, smugglers and illegal immigrants are punished under Chapter 17, Section 8 and 8a of the Finnish Penal Code and under Chapter 12, Section 185 of the Finnish Aliens Act

Penalties:

Chapter 17, Section 8(1)-(3) Penal Code:

A fine or up to 2 years imprisonment (a person, who brings or attempts to bring to Finland or to another country through Finland a foreigner without a valid passport, other travel document, visa or residence permit; arranges or procures transport to Finland for a person referred to in subparagraph (1); gives to another person a passport, visa or residence permit that is false, falsified or issued to someone else, for use when entering the country)

Chapter 17, Section 8a(1)-(2)

From four months to six years imprisonment (if in the arrangement of illegal immigration a serious bodily injury, serious illness or a life-threatening condition or a comparable condition, especially severe suffering, is caused intentionally or through gross negligence to another person; the offence has been committed as a part of the activities of a criminal organisation referred to in Section 1a subparagraph (4), and if the offence is aggravated if assessed as a whole)

Chapter 12, Section 185 Aliens Act

A fine (an alien who deliberately resides in the country without the required travel document, visa or residence permit; without a right to gainful employment, deliberately is in gainful employment or pursues a trade; or deliberately or through gross negligence fails to comply with the obligation to report under section 118, another obligation under section 119, or a request under section 130 to appear before the authorities to submit information on his or her residence)

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8. Germany

Penalties:

Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act)

Promulgated as Article I of the Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act, Federal Law Gazette, Vol 2004 Part I, page 1950).

This Act entered into force on **1 January 2005**.

Section 95 Penal Provisions

(1) A fine or up to 1 year imprisonment (anyone who contrary to section 3(1) in conjunction with Section 48(2) resides in federal territory without a necessary residence title pursuant to the first sentence of Section 4 (1), is obliged to leave the federal territory without appeal and whose deportation has not been suspended; enters the federal territory in contravention of Section 14 (1)(1) or (2); contravenes an enforceable order pursuant to the first or second sentences of Section 46(2) or the second sentence of Section 47(1) or Section 47(2); fails to furnish an item of information or furnishes incorrect or incomplete information in contravention of Section 49(1), insofar as the offence is not punishable pursuant to Section 49(2)(2); fails to tolerate a measure specified in Section 49(8) in contravention of said Section; fails repeatedly to meet an obligation to report to the authorities in contravention of Section 54a, repeatedly contravenes geographic restrictions or other conditions imposed on their stay or fails to meet the obligation to take up residence in a designated facility despite having been notified repeatedly as to the legal consequences, or uses certain means of communication in contravention of Section 54a(3); repeatedly breaches a geographic restriction pursuant to Section 61(1) or belongs to an organisation or group in the federal territory which consists primarily of foreigners, and whose existence, aims or activities are concealed from the authorities in order to avert the prohibition of said organisation)

(2) A fine or up to 3 years imprisonment (anyone who enters the federal territory or resides in said territory in contravention of the first sentence of Section 11(1); furnishes or uses false or incomplete information in order to procure a residence title for themselves or for another or who knowingly uses a residence title procured in this manner for the purposes of deceit in legal matters

An attempt to commit an offence shall be punishable in the cases covered by Sub-section 1(3) and Sub-section 2(1)(a).

Objects which are related to an offence pursuant to Sub-section 2(2) may be confiscated.

EUROPOL PUBLIC INFORMATION

Section 96 Smuggling of foreigners into the Federal territory

1) A fine or up to 5 years imprisonment (anyone who incites another person to commit any of the acts specified in Section 95(1)(1), (2) or (3) or Section 95(2) or aids another person in committing such an act and (1) receives a pecuniary advantage or the promise of a pecuniary advantage in return or (2) acts in such a manner repeatedly or for the benefit of several foreigners)

2) From 6 months to 10 years imprisonment (anyone who, in the cases covered by Section 96(1) acts for gain; acts as a member of a band which has come together for the purpose of committing such offences on a continuous basis; carries a firearm, if the offence concerns an act pursuant to Section 95(1)(3) or Section 95(2)(1)(a); carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act pursuant to Section 95(1)(3) or Section 95(2)(1)(a), or subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of sustaining severe damage to their health)

3) An attempt to commit such offences shall be punishable.

4) Sub-section 1(1), Sub-section 2(1) and Sub-section 3 shall be applicable to contraventions of statutory provisions on the entry of foreigners into the European territory of a state party to the Convention Implementing the Schengen Agreement and the residence of foreigners in such territory, if such contraventions correspond to the acts specified in Section 95(1)(2) or (3) or Sub-section 2(1) and the offender supports a foreigner who is not a national of a Member State of the European Union or of another state party to the Convention on the European Economic Area.

5) Section 73d of the Penal Code shall be applicable in the cases covered by Sub-section 2(1), also in conjunction with Sub-section 4, and in cases covered by Sub-section 2(2) to (5).

Section 97 Smuggling of foreigners into the Federal territory resulting in death; smuggling for gain and as organised bands

1) No less than 3 years imprisonment (anyone causing the death of the smuggled person in the cases covered by Section 96(1), also in conjunction with Section 96(4))

2) From 1 to 10 years imprisonment (anyone acting for gain as a member of a band which has come together for the purpose of committing such offences on a continuous basis in the cases covered by Section 96(1), also in conjunction with Section 96(4))

3) Less serious cases pursuant to Sub-section 1 shall be punishable by imprisonment for a term of between one and ten years, less serious cases pursuant to Sub-section 2 shall be punishable by imprisonment for a term of between six months and ten years.

4) Section 73d of the Penal Code shall be applicable.

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Section 98 Provisions as to fines

1) Anyone who negligently commits an act specified in Section 95(1) (1) or (2) or Sub-section 2(1) (b) shall be deemed to have committed an administrative offence.

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9. Greece

Penalties

Law 2910/2001 Entry and stay of aliens in Greek Territory

Article 50: Illegal entry into and exit from the country (1-2)

A fine and at least three months imprisonment (whoever exits or attempts to exit Greek territory or enters or attempts to enter it without complying with the legal formalities)

Article 54: Obligations of employees and other individuals –Sanctions (5-8)

A fine and at least three months imprisonment (whoever facilitates the entry of an alien into Greek territory without his being submitted to the control provided by Article 4; illegally possesses or uses a genuine passport or other travel document of another person; retains the passport or other travel document of another person or refuses to surrender it to the competent service; possesses or uses a forged passport or other travel document)

6) A fine, at least three months imprisonment and deportation (whoever facilitates the illegal stay of an alien or obstructs the investigations of the police authorities for his location)

Trafficking in Human Beings – Article 323A Penal Code:

Article 323A (1)-(2) Penal Code

A fine and up to 10 years imprisonment (whoever with the use of violence, threat, power and abuse or with any other means, hires, transfers, promotes in the country or outside the country, detains, remands, harbors, encourages, delivers with or without compensation, or takes from another person a person on order to take organs from his body, or to exploit his labor; this sentence is also imposed to offenders who attain the same end misleading victims taking advantage of their situation by making false promises and commitments, offering gifts, presents or other benefits)

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10. Hungary

In Hungary, people smuggling is regulated in Section 218 of the Penal Code. Any person who acts as an accomplice in the illegal crossing of a state border for pecuniary gain will be punished by 2 years to 8 years imprisonment.

Penalties:

People Smuggling - Section 218 (1)-(4) Penal Code:

Section 218 (1)

2 years up to 8 years imprisonment (any person who acts as an accomplice in the illegal crossing of state borders (section 210) for pecuniary gain)

Section 218 (2)

up to 3 years imprisonment (any person who acts as an accomplice in the crossing of the border of the Republic of Hungary without authorisation or in an unauthorised manner for pecuniary gain)

Section 218 (3)

5 years up to 10 years imprisonment (any person committing the act as a member of or on behalf of a criminal organisation in the case of subsection (1))

2 years up to 8 years imprisonment (any person committing the act as a member of or on behalf of a criminal organisation in the case of subsection (2))

Section 218 (4)

up to 2 years imprisonment (any person involved in preparations for smuggling illegal aliens, as set forth in subsections (1)-(3))

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11. Ireland

In Ireland, smuggling/trafficking in persons is covered under the “Illegal Immigrants (Trafficking) Act 2000”, which came into force in September 2000 with the purpose of creating an offence of trafficking/smuggling with illegal immigrants and asylum seekers. Furthermore, the Employment Permits Act 2003 prohibits the employment of non-nationals who do not have an employment permit and the Immigration Act 2003 makes provisions in relation to the control of entry into the state of non-nationals. Currently, a new Immigration Bill is under preparation (Immigration Bill 2004).

Penalties:

Section 2, Illegal Immigration (Trafficking) Act 2000:

Trafficking in illegal immigrants

A person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable to-

A fine not exceeding **£1,500** or to imprisonment for a term not exceeding **12 months** or to both (on summary conviction)

A **fine** or to imprisonment for a term not exceeding **10 years** or to both (on conviction on indictment)

Subsection (1) shall not apply to anything done by a person otherwise than for gain, or to anything done to assist a person seeking asylum by a person in the course of his or her employment by a bona fide organisation if the purposes of that organisation include giving assistance to persons seeking asylum.

Subsection (1) shall apply to acts done or omissions made outside, as well as to acts done or omissions made, in the State.

Section 2, Employment Permits Act 2003:

A **fine** (not exceeding €250.000) or up to **10 years** imprisonment or both (on conviction on indictment, if the offence is an offence consisting of a contravention of subsection (2) (subsection (2): A person shall not employ a non-national in the State except in accordance with an employment permit))

Section 2 (Liability of carriers), Immigration Act 2003:

A **fine of €3000** (on summary conviction)

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12. Italy

In Italy, Article 12 of the Law no. 189/2002 (which amends the regulations on immigration and asylum) states that whoever performs acts aimed to bring about illegal entry of a foreigner is punished with imprisonment of up to 3 years and a fine of up to €15,000 for each smuggled person. Imprisonment is increased from 4 to 12 years if e.g. the purpose is to gain profit, even indirect or the offence is committed by three or more persons acting together. Illegal migration per se is not a crime but a breach of administrative law.

The action of remaining within the State's borders after two expulsion orders have been enacted against an individual instead constitutes a criminal act. Illegal permanence within the country's borders is thus qualified a criminal act rather than illegal migration. Also criminally sanctionable are all actions directed at ensuring the clandestine entry of one or more individuals within the State's borders or within the borders of another State. In law 189/2002 all behaviour is punishable including single actions which concur to trafficking, except actions which are undertaken on humanitarian grounds

Penalties:

Provisions against clandestine immigrations - Article 12 Law no. 189/2002:

A fine of up to 15.000 € for each person and up to 3 years imprisonment (whoever acts to provide entry into the territory of the State to a foreigner or acts to permit the illegal entry into another State where the person is not a national and has no residency rights, unless the fact constitutes a more serious crime,

A fine of up to 15.000€ for each person and a possibility of between 4 and 12 years imprisonment (unless it constitutes a more serious crime, the actions of whoever acts to permit entry of a person in the territory of the State, for the purpose of gaining a profit, even if indirect, in violation of the norms in this single Act. The same sanction is applicable when the crime is committed by three or more persons acting together or by using international transport means or fake or altered or in any case illegally obtained documents)

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13. Latvia

Under Section 285 of the Latvian Criminal Code, smuggling is punishable by a maximum of five years imprisonment (seven if the offence is repeated) and the confiscation of property is involved. The penalty can be up to ten years imprisonment if a person illegally conveys more than five persons at a time across the border.

Penalties:

Illegal Crossing of a State Border - Section 284 (1)-(2) of the Criminal Code

Article 1

A fine, custodial arrest or up to 3 years imprisonment (for a person who commits illegal crossing of a State border without a travel document or authorisation from the appropriate institution)

Article 2

A fine or up to 5 years imprisonment (for a person who commits the same acts, if commission thereof is repeated)

Unlawful Conveyance of a Person Across a State Border - Section 285 of the Criminal Code:

Article 1

up to 5 years imprisonment (for a person who commits unlawfully conveying a person across a State border, in violation of provisions regarding border crossing)

Article 2

up to 7 years imprisonment, with or without confiscation of property (for a person who commits the same acts, if commission thereof is repeated or by a State official utilising his or her official position)

Article 3

From 5 to 10 years imprisonment, with confiscation of property (for a person who commits unlawfully conveying a large number of persons, that is, more than five persons at one time, across a State border)

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14. Lithuania

The Penal Code in Lithuania has recently been completely changed. The new article 292 of the Penal Code penalises the smuggling of human beings through the national border of Lithuania.

Penalties:

Smuggling of human beings through the national border – Article 292 (1)-(2) Penal Code:

Article 292 (1) Penal Code

A fine, temporary detention or up to 6 years imprisonment (a person, who smuggles a foreigner, who has no permanent residence in Lithuania through the national border or who, within the territory of Lithuania, hides or facilitates the illicit transportation of such a person who has already illegally crossed the national border)

Article 292 (2) Penal Code

From 4 to 10 years imprisonment (a person, who organises the illicit transportation of a foreigner, who has no permanent residence in Lithuania through the national border or who, within the territory of Lithuania, organises the illicit transportation or the harbouring of such a person who has already illegally crossed the national border)

Article 292 (3) Penal Code

Legal person is also liable for activities described in this article.

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15. Malta

In Malta, the Immigration Act restricts controls and regulates immigration into Malta. Under Article 32 of the Immigration Act, any person who aids or assists any person to land or attempt to land in Malta will be punished by a fine or up to 2 years imprisonment or both.

Penalties:

Article 32 (1a-g) Immigration Act (Part IV “General”):²

A fine or up to 2 years imprisonment or both, unless a greater punishment is established for such offence by another law (any person who aids or assists any person to land or attempt to land in Malta, or to reside in Malta, contrary to the provisions of this Act, or any person who aids or assists any person to land or attempt to land, or to reside in, or to leave any other State contrary to the law of entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable grounds for believing, to be in Malta contrary to the provisions of this Act; takes in his employment, or gives work to, any person who is not an exempt person and is not in possession of a licence granted to him for the purpose of such employment or work under the provisions of this Act, or otherwise aids or assists any person who is not an exempt person in the commission of an offence contemplated in article 23; in relation to any information to be given under or for purposes of this Act, makes or causes to be made any false return, false statement or false representation; forges any document or true copy of a document or an entry made in pursuance of this Act; obstructs or impedes any person in the lawful exercise of his powers or duties under this Act; without lawful authority uses or has in his possession any document required for the purposes of this Act which is forged; contravenes any provision of this Act in respect of which an offence is not established under any other article of this Act).

² Legal-Malta, the Maltese portal specialising in the provision of comprehensive Malta-related legal and business content 2003

EUROPOL PUBLIC INFORMATION

16. The Netherlands

The new Dutch Criminal Code related to human trafficking (Art. 273a) and human smuggling (art. 197a) came into force on 1 January 2005. The new law is in accordance with the content of the two UN protocols and directives of the European Union. With respect to human smuggling, it is now an offence to help a migrant who enters or travels illegally in the Netherlands, another Member State of the EU, Iceland, Norway or any other state that has signed the protocol against smuggling of migrants by land, sea and air. It will not be an offence if it can be proved that help was given with the aim of humanitarian aid. Also, it is an offence to help a migrant - with the aim of profit - to stay illegally in the Netherlands, another Member State of the EU, Iceland, Norway or any other state that has signed the above mentioned protocol. Sentences vary between 4 years to a maximum of 15 years imprisonment.

Penalties:

Criminal Code

Article 197a Smuggling of human beings (Since 1 January 2005)

1) A fine or up to 4 years imprisonment (whosoever provides assistance to another person to acquire entry to the Netherlands or to transit the Netherlands, another Member State of the European Union, Iceland, Norway or any state which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Convention against Transnational Organized Crime concluded on 15 November 2000 in New York, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognisant of the fact or having serious reason to believe that the said entry or transit is illegal)

2) A fine or up to 4 years imprisonment (whosoever in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another Member State of the European Union, Iceland, Norway or any state which has acceded to the Protocol mentioned in the first paragraph, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognisant of the fact or having serious reason to believe that the said residence is illegal)

3) If one of the offences described in the first and third paragraphs is committed whilst exercising any office or practising any profession, a penal sentence of a maximum of six years or a pecuniary penalty of the fifth category will be awarded and the holder may be disqualified from holding that office or practising that profession and the judge may order his sentence to be made public.

4) A fine or up to eight years imprisonment (if one of the offences described in the first and third paragraphs be committed by a person who makes a profession of doing so or who habitually does so, or by several persons acting in association)

EUROPOL PUBLIC INFORMATION

5) A fine or up to 12 years imprisonment (if one of the offences described in the first and third paragraphs results in severe bodily injuries or it is feared that a person's life may be in jeopardy,

6) A fine and up to 15 years imprisonment (if one of the offences described in the first and third paragraphs results in death).

EUROPOL PUBLIC INFORMATION

17. Poland

Under Article 264 of the Penal Code, persons who illegally cross the border are subject to fines, restrictions on movement and up to 2 years imprisonment. Under Article 264 (3) of the Penal Code, persons who organise illegal entry into Poland can be punished by imprisonment of between 3 months and 5 years.³ Furthermore, Article 258 of the Penal Code criminalises the participation in a criminal group or association and any person who sets up or leads such a group or association.

Penalties:

Article 258 (1)-(3) Penal Code:

Article 258 (1) Penal Code

Up to 3 years imprisonment (whoever participates in an organised group or association having for its purpose the commission of offences)

Article 258 (2) Penal Code

From 3 months to 5 years imprisonment (for the perpetrator, if the group or association specified in § 1 has the characteristics of an armed organisation)

Article 258 (3) Penal Code

From 6 months to 8 years imprisonment (whoever sets up the group or association specified in § 1 or 2 or leads such a group or association)

Article 264 (1)-(3) Penal Code:

Article 264 (1) Penal Code

A fine, restriction of liberty or up to 2 years imprisonment (whoever crosses the border of the Republic of Poland in violation of the relevant regulations)

Article 264 (2) Penal Code

Up to 3 years imprisonment (whoever commits the act specified in § 1, with the use of violence, threats or deceit or in co-operation with other persons)

Article 264 (3) Penal Code

From 3 months to 5 years imprisonment (whoever organises the crossing of the border of the Republic of Poland for other persons, in violation of the relevant regulations)

³ UNHCR, Safeguards for Asylum Seekers and Refugees in the Context of the Prevention of Irregular Migration into and within Europe, May 2003

EUROPOL PUBLIC INFORMATION

18. Portugal

In Portugal, the Statutory Law of Foreigners (n°. 244/98, of 08 August, with the changes introduced by the Statutory Law n°. 97/99, of 26 July, by the Statutory Law n°. 4/01, of 10 January, and Statutory Law n°. 34/03, of 25 February) penalises the “Facilitation of Illegal Immigration” (Article 134-A) and the “Conspiracy of Illegal Immigration” (Article 135). Furthermore, the recruitment of illegal workers (Article 136-A) is punishable by up to 5 years imprisonment.

Penalties:

Statutory Law of Foreigners

(n°. 244/98, of 08 August, with the changes introduced by the Statutory Law n°. 97/99, of 26 July, by the Statutory Law n°. 4/01, of 10 January, and Statutory Law n°. 34/03, of 25 February)

Penal Dispositions, Chapter X

Article 134-A (1)-(3) - Facilitation of Illegal Immigration:

Up to 3 years imprisonment (whoever promotes or facilitates, in any way, the illegal entry or transit in national territory of a foreign national)

From 1 to 4 years imprisonment (whoever promotes or facilitates, in any way, the illegal entry, permanence or transit of foreign national in national territory, with a lucrative intention)

The attempt is punishable

Article 135 (1)-(4) - Conspiracy to facilitate Illegal Immigration:

From 1 to 6 years imprisonment (whoever sets up a group, organisation or association dedicated to commit the crimes foreseen in the previous article (134-A))

From 1 to 6 years imprisonment (to any person belonging to those groups, organisations or associations)

From 2 to 8 years imprisonment (to the heads of the groups, organisations or associations mentioned previously)

The attempt is punishable.

Article 136-A (1)-(3) - Recruitment of illegal workers:

From 1 to 4 years imprisonment (whoever, with a lucrative intention, for himself or for a third party, recruits with the purpose to introduce in the labour market foreign nationals that are not entitled with a residence permit, a permanence permit or a work permit)

From 2 to 5 years imprisonment (whoever commits the acts foreseen in point number 1 in a repeated way)

The attempt is punishable.

EUROPOL PUBLIC INFORMATION

19. Slovak Republic

Penalties:

Section 171a (1)- (6) - Illegal State Border Crossing

From 2 to 8 years imprisonment (any person who, with the intention to obtain for himself or for another person a direct or indirect financial benefit or material benefit for a non-national of the Slovak Republic, or a person with a permanent residence permit in the territory of the Slovak Republic shall organise an illegal state border crossing of the Slovak Republic; transfer across its territory; if activities of such person shall enable or promote the aforesaid; shall for the purpose of letter a) produce, provide, offer or hold a false travel document or a false identification document; shall enable or help to stay illegally or procure illegal employment in the territory of the Slovak Republic)

From 5 to 10 years imprisonment (if the criminal act specified in sec.1 hereof is committed; being a member of an organized group; with the intention to hide or facilitate committing of another criminal act in a manner, that can violate the life or health state of transferred persons or represents inhuman or derogative behaviour towards these persons or their abuse)

From 5 to 10 years imprisonment (if by committing the act specified in sec.1 hereof shall obtain for himself or for another person a substantial advantage.

From 8 to 12 years imprisonment (if committing an act specified in sec.1 hereof, if by committing the aforesaid he shall cause serious bodily harm or death; or obtain for himself or another person an extensive advantage)

From 8 to 12 years imprisonment (if he commits the act specified in sec.1 hereof, being a member of a criminal group)

From 10 to 15 years imprisonment (if the consequence of the act committed pursuant to sec.1 hereof shall be death of several persons)

Section 171b (1- 3)

From 2 to 8 years imprisonment or confiscation of property (any person, who crosses the State border using violence or threat of imminent violence)

From 5 to 12 years imprisonment or confiscation of property, if a person shall organise the offence referred to in para. 1; causes such an offence using a weapon or at least in two more persons; causes such an offence with a purpose to hide or facilitate another criminal offence, through the commission of such an offence causes serious bodily harm or other serious consequence; causes such an offence at the time of preparedness for the defence of the country)

EUROPOL PUBLIC INFORMATION

From 10 to 15 years imprisonment (if through the commission of the offence referred to in paragraph 1 he/she causes death or if he/she causes such an offence as a soldier at the time of preparedness for the defence of the country)

Section 171c

From 6 months to 3 years imprisonment (any person violating international flight regulations by entering the territory of the Slovak Republic using a flying means of transport)

Other applicable sections of the Penal code:

Establishment, instigation and promotion of a criminal group

From 3 to 10 years imprisonment or forfeiture of property (any person establishing or instigating a criminal group, being its member, being active for it or promoting it)

From 5 to 15 years imprisonment (any person establishing a terrorist group, being its member, being active for it or promoting it)

EUROPOL PUBLIC INFORMATION

20. Slovenia

In Slovenia, the offence of smuggling is stipulated under Article 311 of the Penal Code. If a person illegally transports aliens across borders, she/he can be imprisoned for up to five years; if committed as part of an organised gang, if obtaining pecuniary advantage, procuring a workforce, endangering human life or supporting terrorist activities, then imprisonment can be up to eight years.

Penalties:

Article 311 (1)-(6) Penal Code:

Unlawful crossing of the State Border or state territory- Article 311 Penal Code:

(1) A fine or between three months and three years imprisonment (whoever crosses the state border of the Republic of Slovenia or unlawfully enters the territory of the Republic of Slovenia, forcibly or armed).

(2) A foreign person who does not have a permit to reside in the Republic of Slovenia shall be subject to the same penalty if they remain in the territory of the Republic of Slovenia or resist lawful removal from said territory in the manner specified in the preceding paragraph.

(3) A fine and up to five years imprisonment (whoever is engaged in unlawfully bringing foreign persons who do not have permits to enter or reside in the Republic of Slovenia to the Republic of Slovenia, transporting them to said territory, helping them to hide or unlawfully bringing a group of such foreign persons over the border or territory of the state for payment.

(4) An official who abuses their official position or rights by enabling a foreign person to unlawfully enter the territory of the Republic of Slovenia or unlawfully reside in said territory shall be subject to the same penalty specified in the preceding paragraph.

(5) A fine and one year up to eight years imprisonment (if by committing the offences from the third or fourth paragraphs of this article the perpetrator obtains, for themselves or for another, a disproportionate pecuniary advantage, procures a workforce, endangers human life or health, supports terrorist activities or commits such offences as a member of a criminal association).

(6) The provisions of the preceding paragraphs shall also be used for criminal offences committed abroad if the country in which they were committed has, like the Republic of Slovenia, adopted the common international law obligation to prevent such criminal offences, regardless of where they were committed, and the offences under that country's law are prescribed as criminal offences in the same way. If the criminal offence was committed on the territory of the European Union, citizens of the Member States shall not be regarded as foreign persons in the application of the provisions of the

EUROPOL PUBLIC INFORMATION

second, third, fourth and fifth paragraphs of this article.

Article 297 Criminal association

1. From 6 months to 5 years imprisonment (whoever participates in a criminal association which has the purpose of committing criminal offences for which a prison sentence of more than three years may be passed).
2. From 6 months to 8 years imprisonment (whoever sets up or manages an association from the preceding paragraph).
3. A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences or uncovers information which has a bearing on the investigation and production of evidence for criminal offences that have already been committed may have their penalty for these offences mitigated, in accordance with point 3 of Article 42 of this Code.

EUROPOL PUBLIC INFORMATION

21. Spain

Penalties

Penal Code

Non-penitentiary measures

Article 108.

1. Where the subject is a foreigner not residing legally in Spain, the judge or court shall decide in its sentence, prior to its hearing with the former, his expulsion from national territory as a substitute for any safety measures applicable to him, save where the judge or court, prior to its hearing with the Public Prosecutor's Office, exceptionally, and on substantiated grounds, considers that the nature of the offence justifies the case to be heard in Spain.

Any expulsion thus decided shall imply the closure of any administrative proceedings relating to authorisation for residence or work in Spain.

Where the substitution of the safety measure by expulsion is decided, but cannot be effected, the safety measure originally ordered shall be imposed.

2. Foreigners may not return to Spain for 10 years from the date of their expulsion.

3. Any foreigner who attempts to violate a judicial decision on expulsion and prohibition to enter Spain, referred to in the aforesaid paragraphs, shall be returned by the governmental authority, and the calculation of the prohibition period for entry into Spain shall begin again, in full.

Article 318 bis (Article amended by *Ley Orgánica 11/2003 of 29 September 2003*)

From 4 to 8 years imprisonment (any persons who, directly or indirectly, promote, encourage or facilitate the illegal trafficking or clandestine immigration of persons from, in transit or to Spain)

From 5 to 10 years imprisonment (where the purpose of the illegal trafficking or clandestine immigration is the sexual exploitation of the persons)

EUROPOL PUBLIC INFORMATION

22. Sweden

Penalties:

Aliens Act:

Chapter 10

Section 2a

Up to two years imprisonment (any person who intentionally helps an alien to unlawfully enter or pass through Sweden, a Member State of the European Union, Norway or Iceland)

From six months to six years (if the offence is considered grave. In judging whether the offence is grave, special attention shall be paid to whether the act: was carried out in return for money; was a part of activities involving a large number of people; or was carried out in a way implying that the alien was exposed to mortal danger or otherwise was carried out in a ruthless way)

A fine or up to six months imprisonment (if the offence is considered petty)

Attempted offences or preparation of offences under this Section are punishable as provided in Chapter 23 of the Penal Code. Act (2004:206).

EUROPOL PUBLIC INFORMATION

23. The United Kingdom

The Nationality, Immigration and Asylum Act 2002 created a new offence of smuggling and increased the penalty for assisting illegal migration from 10 (under the Immigration Act 1971) to 14 years. If other offences are involved, such as kidnap or extortion, the offender can be prosecuted for these offences under criminal law.

Penalties:

Nationality, Immigration and Asylum Act 2002

25 - Assisting unlawful immigration to Member State

(1) A person commits an offence if he-

- (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union
- (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
- (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(2) In subsection (1) "immigration law" means a law which has effect in a Member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to-

- (a) enter the State,
- (b) transit across the State, or
- (c) be in the State.

(3) A document issued by the government of a Member State certifying a matter of law in that State-

- (a) shall be admissible in proceedings for an offence under this section, and
- (b) shall be conclusive as to the matter certified.

(4) Subsection (1) applies to anything done-

- (a) in the United Kingdom
- (b) outside the United Kingdom by an individual to whom subsection (5) applies, or
- (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.

(5) This subsection applies to-

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British National (Overseas),

EUROPOL PUBLIC INFORMATION

- (d) a British Overseas National
- (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
- (f) a British protected person within the meaning of that Act.

(6) A person guilty of an offence under this section shall be liable-

- (a) on conviction on indictment, to **imprisonment for a term not exceeding 14 years, to a fine or both**, or
- (b) on summary conviction, to **imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both**.

25A - Helping asylum-seeker to enter the United Kingdom

(1) A person commits an offence if-

- (a) he knowingly and for gain facilitates the arrival in the United Kingdom of an individual, and
- (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.

(2) In this section "asylum-seeker" means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under-

- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c.33) (interpretation)), or
- (b) the Human Rights Convention (within the meaning given by that section).

(3) Subsection (1) does not apply to anything done by a person acting on behalf of an organization which-

- (a) aims to assist asylum-seekers, and
- (b) does not charge for its services.

(4) Subsections (4) to (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

25B - Assisting entry to the United Kingdom in breach of deportation or exclusion order

(1) A person commits an offence if he-

- (a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
- (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.

(2) Subsection (3) applies where the Secretary of State personally directs that the

EUROPOL PUBLIC INFORMATION

exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good.

(3) A person commits an offence if he-

- (a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom,
- (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom, and
- (c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual's exclusion from the United Kingdom is conducive to the public good.

(4) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.